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11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA
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14 JOHNATHON ROBERTS,) 3:05-cr-00098-HDM-RAM
15 Defendant-Petitioner,) 3:10-cv-00531-HDM
16 vs.) ORDER DENYING DEFENDANT-
17 UNITED STATES OF AMERICA,) PETITIONER'S OBJECTION TO
18 Plaintiff-Respondent.) GOVERNMENT'S MOTION FOR AN
19 ORDER WAIVING ATTORNEY-
CLIENT PRIVILEGE

20 Before the court is the defendant-petitioner's objection [392]
21 to the government's motion for an order waiving attorney-client
22 privilege [389]. The objection [392] was filed on December 23,
23 2010. No reply has been filed.

24 The government's motion for an order waiving attorney-client
25 privilege asks this court "to issue an order wherein the attorney-
26 client privilege in 3:05-cr-98-HDM-RAM is deemed waived for the
27 purposes of this proceeding as to all contentions raised in the
28 defendant's [2255] Motion, and all materials and information

1 related thereto be ordered divulged to the government.” [389]

2 In *Bittaker v. Woodford*, 331 F.3d 715 (9th Cir. 2003), the
3 Ninth Circuit addressed the scope of an implied waiver of the
4 attorney-client privilege in the context of a habeas petitioner's
5 claim of ineffective assistance of counsel. It held that “[i]t has
6 long been the rule in the federal courts that, where a habeas
7 petitioner raises a claim of ineffective assistance of counsel, he
8 waives the attorney-client privilege as to all communications with
9 his allegedly ineffective lawyer.” *Id.* at 716. However, the Ninth
10 Circuit has imposed a “narrow waiver rule.” *Id.* at 720-21. “[T]he
11 court must impose a waiver no broader than needed to ensure the
12 fairness of the proceedings before it.” *Id.* at 720. Thus, not all
13 of the communications between a petitioner and his or her counsel
14 need be disclosed, but only those that address the particular
15 claims of ineffectiveness at issue and that are necessary to give
16 the opposing party a fair opportunity to defend. See *Alvarez v.*
17 *Woodford*, 81 Fed. Appx. 119, 119 (9th Cir. 2003) (only those
18 documents or portions of documents relating to the claim asserted
19 by the petitioner were ordered disclosed); *United States v. Garcia*,
20 2010 WL 144860 *5 (E.D. Cal. 2010) (“When a petitioner in a habeas
21 corpus action raises a claim of ineffective assistance of counsel,
22 he waives the attorney-client privilege as to the matters
23 challenged).

24 Accordingly, the government’s motion for an order deeming
25 attorney-client privilege waived [389] is hereby GRANTED. The
26 attorney-client privilege in 3:05-cr-98-HDM-RAM is deemed waived
27 for the purposes of this action as to the contentions of
28 ineffective assistance of counsel raised in the defendant-

1 petitioner's § 2255 motion. The government may request that
2 attorney Marc Picker provide an affidavit addressing the
3 allegations and matters raised in the defendant-petitioner's § 2255
4 motion and all materials and information related thereto.

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6 **IT IS SO ORDERED.**

7 DATED: This 4th day of January, 2011.

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9 UNITED STATES DISTRICT JUDGE
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